IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NICOLE SCHNEYDER	:	
Plaintiff,	:	
	:	
v.	:	**CIVIL ACTION**
	:	**NO. 06-4986**
GINA SMITH; OFFICE OF DISTRICT	:	
ATTORNEY OF PHILADELPHIA	:	
Defendants.	:	
	:	

DuBOIS, J. **JANUARY 9, 2007**

M E M O R A N D U M

I. INTRODUCTION

This case arises out of the detention of plaintiff Nicole Schneyder as a material witness in a Pennsylvania homicide prosecution, Commonwealth v. Michael Overby (CP No. 9501-0580 2/3). In Count I of the Complaint, plaintiff alleges a cause of action under 42 U.S.C. § 1983 against defendants Gina Smith, Esq. and the Office of District Attorney of Philadelphia (the "District Attorney's Office"). Specifically, plaintiff alleges that she was detained without probable cause in violation of the Fourth and Fourteenth Amendments of the United States Constitution. In Counts II and III of the Complaint, plaintiff alleges pendant state law claims of false imprisonment and intentional infliction of emotional distress.

Presently before the Court is defendants' Motion to Dismiss Plaintiff's Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(6). For the reasons set forth below, defendants' Motion to Dismiss is granted in part and denied in part.

II. BACKGROUND

The following facts are taken from the Complaint or are matters of public record, and are presented in the light most favorable to plaintiff.[1]

In 1993, Michael Overby was arrested and charged with first-degree murder, robbery, and conspiracy. Compl. ¶ 8; Commonwealth v. Overby, 809 A.2d 295, 298 (Pa. 2002). In 1995, Overby was tried before a jury, which was unable to reach a verdict as to the first-degree murder charge. Compl. ¶ 8; Overby, 809 A.2d at 299. The trial court declared a mistrial, and subsequently scheduled a new trial. Overby, 809 A.2d at 299. In 1996, a second jury convicted Overby of first-degree murder and sentenced him to death. Compl. ¶ 8; Overby, 809 A.2d at 299. However, on October 24, 2002, the Pennsylvania Supreme Court overturned the conviction and granted Overby a new trial. Overby, 809 A.2d at 300.

Defendant Smith was assigned to prosecute the third Overby trial, which was scheduled to begin on February 2, 2005. Compl. ¶¶ 8, 10.[2] On January 26, 2005, Smith secured a material witness warrant for plaintiff's arrest, which was signed by Judge Rayford Means of the Court of Common Pleas of Philadelphia County. Id. ¶ 10. On January 27, 2005, Judge Means conducted a bail hearing, and set bail for plaintiff at $300,000. Id. ¶¶ 11-12. Plaintiff did not post bail and was detained.

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[1] Generally, the court may not consider documents outside of the pleadings when ruling on a motion to dismiss. In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1426 (3d Cir. 1997). However, a court may consider public documents and prior judicial proceedings without converting a motion to dismiss into one for summary judgment. In re Rockefeller Ctr. Props. Sec. Litig., 184 F.3d 280, 292-93 (3d Cir. 1999).

[2] The third trial ultimately resulted in a hung jury. Compl. ¶ 8. A fourth trial is scheduled for February 2007. Mot. to Dismiss at 3.

Plaintiff avers that Smith and the District Attorney's Office had "sole responsibility to track and monitor plaintiff's custodial status." Id. ¶ 25. Plaintiff further avers that "Judge Means specifically directed defendant Smith, both on the record in open court [at the January 27, 2005 hearing] and off the record in the judge's robing room, to take the administrative step of notifying him if the Overby case were continued or broke down for any reason, because in that situation Judge Means said that he would release plaintiff." Id. ¶ 14.[3]

On February 2, 2005, the Overby trial was continued until May 25, 2005. Id. ¶ 18. Smith did not notify Judge Means that the trial was continued, and plaintiff was not released. Id. ¶¶ 19-20. Plaintiff alleges that "[b]etween February 2, 2005 and March 21, 2005, plaintiff, [her] sister, and others repeatedly telephoned defendant Smith to advise her that plaintiff was still in custody and that something administratively should be done to have her released." Id. ¶ 20. Smith allegedly did not take any action in response to these telephone calls. Id.

On February 28, 2005, plaintiff's father died. Id. ¶ 21. Paul Conway, Esq., Chief of the Homicide Unit at the Defender Association of Philadelphia, obtained an order that allowed plaintiff to attend her father's viewing. Id. ¶ 21. Plaintiff was brought to the service in handcuffs, and was permitted to stay for only a few minutes. Id.

Some time after February 28, 2005, Conway reviewed the notes of testimony of the January 27, 2005 hearing, and learned that Judge Means intended to release plaintiff in the event that the Overby trial was continued. Id. ¶¶ 21, 22. Conway subsequently informed Judge Means

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[3] Plaintiff submitted an Affidavit in support of these allegations. However, the Court concludes that this document is not "integral to or explicitly relied upon in the complaint." In re Burlington Coat Factory Sec. Litig., 114 F.3d at 1426. Thus, the Court may not consider this document when ruling on defendants' Motion to Dismiss.

that the Overby trial had been continued, and Judge Means immediately ordered plaintiff's release. Id. ¶ 22. Plaintiff was released on March 21, 2005. Id. ¶ 24.

III. LEGAL STANDARD

Rule 12(b)(6) of the Federal Rules of Civil Procedure provides that, in response to a pleading, a defense of "failure to state a claim upon which relief can be granted" may be raised by motion. In analyzing a motion to dismiss pursuant to Rule 12(b)(6), the Court accepts as true the facts alleged in the complaint, drawing all reasonable inferences in favor of plaintiff. In re Merck & Co., Inc. Sec. Litig., 432 F.3d 261, 266 (3d Cir. 2005); Lum v. Bank of America, 361 F.3d 217, 223 (3d Cir. 2004). The Court may grant a motion to dismiss only if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Hishon v. King & Spalding, 467 U.S. 69, 73 (1984).

IV. DISCUSSION

A. Plaintiff's § 1983 Claim Against Defendant Smith

Count I of the Complaint asserts a § 1983 claim against Smith for allegedly violating plaintiff's Fourth Amendment right not to be detained without probable cause.[4] Section 1983 does not create substantive rights; in order to state a claim under § 1983, a plaintiff must demonstrate a violation of a federal or constitutional right by a person acting under color of state

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[4] Section 1983 provides, in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983.

law. See, e.g., Morse v. Lower Merion School District, 132 F.3d 902, 906-7 (3d Cir. 1997) (citing Baker v. McCollan, 443 U.S. 137, 144 n.3 (1979)).

In this case, plaintiff alleges that Smith, acting under color of state law, violated her right to be free from unlawful detention under the Fourth and Fourteenth Amendments of the United States Constitution. Compl. ¶ 36. Specifically, plaintiff avers that Smith failed to inform Judge Means that the Overby trial was continued even though Judge Means explicitly instructed Smith to do so. Id. ¶ 32. Had Smith informed Judge Means of the continuance, plaintiff avers that Judge Means would have released plaintiff. Id. Defendants move to dismiss on the ground that Smith is absolutely immune from suit for the alleged deprivation of plaintiff's constitutional rights. Mot. to Dismiss at 1.[5]

The Supreme Court has long recognized that § 1983 claims are subject to two kinds of immunity: qualified immunity and absolute immunity. Buckley v. Fitzsimmons, 509 U.S. 259, 268 (2006); Yarris v. County of Delaware, 465 F.3d 129, 135 (3d Cir. 2006). Although most public officials are entitled to only qualified immunity, some public officials who perform 'special functions' are entitled to absolute immunity. Buckley, 509 U.S. at 268-69; Yarris, 465 F.3d at 135. To determine whether absolute immunity applies, a court considers "the nature of the function performed, not the identify of the actor who performed it." Buckley, 509 U.S. at 269 (citation omitted).

Prosecutors are entitled to absolute immunity from suit under § 1983 for acts "intimately

[5] Defendants also argue, tangentially, that Smith had no duty to inform Judge Means that the Overby trial was continued. Mem. Law of Defs. at 7 n.6. Drawing all reasonable inferences in favor of plaintiff, the Court concludes that further development of the record may establish that Smith had such a duty. Thus, the Court will not dismiss plaintiff's § 1983 claim against Smith on this ground.

associated with the judicial phase of the criminal process" such as "initiating a prosecution and [] presenting the State's case." Imbler v. Pachtman, 424 U.S. 409, 430-31 (1976). Conversely, "[a] prosecutor's administrative duties and those investigative functions that do not relate to an advocate's preparation for the initiation of a prosecution or for judicial proceedings are not entitled to absolute immunity." Buckley, 509 U.S. at 273. "Ultimately, whether a prosecutor is entitled to absolute immunity depends on whether she establishes that she was functioning as the state's 'advocate' while engaging in the alleged conduct that gives rise to the constitutional violation." Yarris, 465 F.3d at 136.

In this case, plaintiff concedes that "Smith enjoys absolute immunity for her conduct in procuring [a] material witness warrant and in arresting and initially detaining plaintiff." Compl. ¶ 10. Indeed, these actions squarely "relate to [Smith's] preparation for the initiation of a prosecution or for judicial proceedings." Buckley, 509 U.S. at 273. See also Betts v. Richard, 726 F.2d 79, 81 (2d Cir. 1984) (absolute immunity bars § 1983 lawsuit against prosecutor who obtained a capias from trial judge to secure the presence of complaining witness at trial); Daniels v. Kieser, 586 F.2d 64, 68 (7th Cir. 1978) (absolute immunity bars lawsuit against prosecutor who made unsworn false statements in order to secure material witness warrant for plaintiff's arrest); Smeal v. Alexander, 2006 WL 3469637, *5 (N.D. Ohio Nov. 30, 2006) (absolute immunity bars § 1983 lawsuit against prosecutor who appeared in court and argued for detention of plaintiff as a material witness).

A separate question before the Court is whether Smith is entitled to absolute immunity for her role in maintaining plaintiff's detention *after* the Overby trial was continued. Specifically, plaintiff argues that the Court must determine whether Smith was functioning as an advocate

when she failed to inform Judge Means of the continuance. Yarris, 465 F.3d at 136. In analyzing this issue, the Court accepts as true the allegation that Smith did not inform Judge Means that the Overby trial was continued even though Judge Means explicitly instructed Smith to do so. Compl. ¶ 32. Moreover, the Court assumes that if Smith had informed Judge Means of the continuance, Judge Means would have released plaintiff from custody. Id.

The Court concludes that Smith's failure to inform Judge Means that the Overby trial was continued was "intimately associated with the judicial phase of the criminal process." Imbler, 424 U.S. at 430-31. The primary function of Smith's actions was to secure the presence of plaintiff, a material witness, at trial. Thus, Smith "was functioning as the state's 'advocate' while engaging in the alleged conduct that gives rise to the constitutional violation." Yarris, 465 F.3d at 136. Plaintiff cannot avoid this outcome "by carving up an act of prosecutorial discretion into different elements and labeling one or more as purely administrative." Robinson v. Gillespie, 2003 WL 21557167, *6 (D. Kan. June 4, 2003).

The fact that Judge Means ordered Smith to notify him if the Overby trial was continued is immaterial to this analysis. As the Second Circuit has explained, "the extent of immunity always depends upon the nature of the activity in question, and not upon how wrongly the particular actors may have performed that activity in a specific instance." Pinaud v. County of Suffolk, 52 F.3d 1139, 1150 (2d Cir. 1995). In this case "the nature of the activity in question" was to secure the presence of a material witness at trial. Even if Smith acted "wrongly" in failing to notify Judge Means of the continuance, she is entitled to absolute immunity for this activity. See, e.g., Betts, 726 F.2d at 81; Daniels, 586 F.2d at 68; Smeal, 2006 WL 3469637 at *5.

The policy rationale for absolute prosecutorial immunity further supports this conclusion.

As the Supreme Court has observed, prosecutors are entitled to absolute immunity, in part, to ensure the proper functioning of the criminal justice system. Imbler, 424 U.S. at 426. "If prosecutors were hampered in exercising their judgment as to the use of . . . witnesses by concern about resulting personal liability, the triers of fact in criminal cases often would be denied relevant evidence." Id. These policy concerns apply with full force where, as here, a prosecutor acts to ensure the presence of a material witness previously detained.

Thus, Smith is absolutely immune from suit for the alleged deprivation of plaintiff's Fourth Amendment rights. That part of defendants' Motion to Dismiss that relates to plaintiff's § 1983 claim against Smith is granted.

B. Plaintiff's § 1983 Claim Against Defendant District Attorney's Office

Count I of the Complaint further asserts a § 1983 claim against the District Attorney's Office. Specifically, plaintiff alleges that the District Attorney's Office failed to properly monitor detained prosecution witnesses and failed to properly supervise District Attorney's Office personnel, including defendant Smith.

Under Monell v. Department of Social Services, 436 U.S. 658, 690 (1978), municipalities are "included among those persons to whom § 1983 applies." To establish Monell liability, a plaintiff must "identify a municipal 'policy' or 'custom' that caused the plaintiff's injury." Board of County Comm'rs of Bryan County v. Brown, 520 U.S. 397, 403 (1997); see also City of Canton, Ohio v. Harris, 489 U.S. 378, 385 (1989); Berg v. County of Allegheny, 219 F.3d 261, 275 (3d Cir. 2000). A municipal "policy" may arise from the "decisions of [a municipality's] duly constituted legislative body or of those officials whose acts may fairly be said to be those of

the municipality." Board of County Comm'rs of Bryan County, 520 U.S. at 403-404.[6] A municipal "custom" is a practice that has not been formally approved, but is "so widespread as to have the force of law." Id. at 404.

To satisfy the causation requirement of Monell, a plaintiff must demonstrate that a municipality was the "moving force" behind the alleged injury. Id. "That is, a plaintiff must show that the municipal action was taken with the requisite degree of culpability and must demonstrate a direct causal link between the municipal action and the deprivation of federal rights." Id. Where the policy or custom at issue does not violate federal law, plaintiff must demonstrate that "the municipal action was taken with 'deliberate indifference' as to its known or obvious consequences." Berg, 219 F.3d at 276 (quoting Board of County Comm'rs of Bryan County, 520 U.S. at 407); see also City of Canton, 489 U.S. at 389.

Defendants move to dismiss plaintiff's § 1983 claim against the District Attorney's Office on the ground that plaintiff has not properly plead a Monell claim. Specifically, defendants argue that "plaintiff has not averred a policy or custom of the [District Attorney's Office] to which the purported violation of plaintiff's constitutional rights may be attributed."

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[6] A plaintiff may identify a municipal policy by reference to individual conduct in the following three situations:

> (1) the individual acted pursuant to a formal government policy or a standard operating procedure long accepted within the government entity, (2) the individual himself has final policy-making authority such that his conduct represents official policy, or (3) a final policy-maker renders the individual's conduct official for liability purposes by having delegated to him authority to act or speak for the government, or by ratifying the conduct or speech after it has occurred.

Hill v. Borough of Kutztown, 455 F.3d 225, 245 (3d Cir. 2006).

Mot. to Dismiss at 1-2.[7]

The ordinary "notice pleading" requirements of Federal Rule of Civil Procedure 8(a) apply to a claim of municipal liability under § 1983. Leatherman v. Tarrant County Narcotics Intelligence and Coordination, 507 U.S. 163, 168-69 (1993); Young v. New Sewickley Tp., 160 Fed. Appx. 263, 265 n.2 (3d Cir. 2005). Pursuant to Rule 8(a), a complaint must include "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a). Rule 8(e)(1) confirms there are no technical pleading requirements, and Rule 8(f) requires that pleadings be so construed as to do substantial justice. Swierkiewicz v. Sorema N. A., 534 U.S. 506, 513-14 (2002).

Plaintiff alleges in the Complaint that the District Attorney's Office "engaged in a pattern and practice of violating the liberty interests of [detained] material witnesses." Id. ¶ 35. Specifically, plaintiff alleges that the District Attorney's Office (1) failed "to properly monitor the status of [detained] Commonwealth witnesses"; and (2) failed "to properly supervise, discipline, restrict and control [District Attorney's Office] personnel, including defendant Smith." Id. ¶¶ 28-29. Plaintiff further alleges that the District Attorney's Office acted with "deliberate indifference" and that defendant's acts "were the proximate cause of plaintiff's injuries," including the deprivation of her Fourth Amendment rights. Id. ¶¶ 28, 30, 36.

The Court concludes that Count I of the Complaint provides a "short and plain statement

[7] The Court independently observes that a district attorney's office may not be a separate legal entity for the purposes of § 1983 liability. See Reitz v. County of Bucks, 125 F.3d 139, 144, 148 (3d Cir. 1997); see also Dickerson v. Montgomery County District Attorney's Office, et al., 2004 WL 2861869, *3 (E.D. Pa. Dec. 10, 2004) (granting motion to dismiss § 1983 claim against county district attorney's office on the basis of Reitz). However, the District Attorney's Office does not move to dismiss on this ground. Had the objection been made, the Court would have substituted the City of Philadelphia as a defendant for the District Attorney's Office.

of the [Monell] claim" as is required under Rule 8(a). Fed. R. Civ. P. 8(a). Specifically, paragraphs 28, 29, 30, 34, 35 and 36 of plaintiff's Complaint satisfy the "liberal notice pleading" requirements of the Federal Rules of Civil Procedure. Swierkiewicz, 534 U.S. at 514. Under these circumstances, the Court "must rely on summary judgment and control of discovery to weed out unmeritorious claims sooner rather than later." Leatherman, 507 U.S. at 168-69. Thus, defendants' Motion to Dismiss is denied with respect to plaintiff's Monell claim against the District Attorney's Office.

C. Plaintiff's State Law Claims Against Defendant Smith

Counts II and III of the Complaint assert state law claims of false imprisonment and intentional infliction of emotional distress against Smith. Defendants move to dismiss plaintiff's claims on the ground that Smith is entitled to absolute immunity under Pennsylvania law. Mem. Law of Defs. at 15.

The Pennsylvania Political Subdivision Tort Claims Act (the "Tort Claims Act") provides, in relevant part: "In any action brought against an employee of a local agency for damages on account of an injury to a person or property based upon claims arising from, or reasonably related to, the office or the performance of the duties of the employee, the employee may assert . . . defenses which are available at common law to the employee." 42 Pa.C.S. § 8546. Pennsylvania common law recognizes the doctrine of absolute immunity for "high public officials" for actions taken within the course of official duties and within the scope of their authority. See, e.g., Testa v. City of Philadelphia, 2003 WL 22318133, *2 (E.D. Pa. Oct. 8, 2003); Smith v. School Dist. of Philadelphia, 112 F. Supp. 2d 417, 425 (E.D. Pa. 2000) (quoting Lindner v. Mollan, 677 A.2d 1194, 1195-96 (Pa. 1996)). Moreover, the Pennsylvania Supreme

Court has ruled that assistant district attorneys, such as defendant Smith, qualify as high public officials for immunity purposes. Durham v. McElynn, 772 A.2d 68, 69 (Pa. 2001).

Thus, defendant Smith is absolutely immune from liability for plaintiff's state law claims. Accordingly, that part of defendants' Motion to Dismiss that relates to plaintiff's state law claims against Smith is granted.

D. Plaintiff's State Law Claims Against Defendant District Attorney's Office

Counts II and III of the Complaint further assert state law claims of false imprisonment and intentional infliction of emotional distress against the District Attorney's Office. Defendants move to dismiss these claims pursuant the Tort Claims Act. Mem. Law of Defs. at 14-15.

Section 8541 of the Tort Claims Act grants municipal agencies immunity from liability for all state law tort claims. 42 Pa.C.S. § 8541; see also Douris v. Schweiker, 229 F. Supp. 2d 391, 403 (E.D. Pa. 2002); Montanye v. Wissachickon School Dist., 2003 WL 22096122, *7 (E.D. Pa. Aug. 11, 2003).[8] Although there are eight enumerated exceptions to this general grant of immunity, none are applicable to this case. See 42 Pa.C.S. § 8542.[9] Furthermore, the District Attorney's Office is a local agency within the meaning of the Tort Claims Act. Douris, 229 F.

[8] The Tort Claims Act provides, in relevant part: "Except as otherwise provided in this subchapter, no local agency shall be liable for any damages on account of any injury to a person or property caused by any act of the local agency or an employee thereof or any other person." 42 Pa.C.S. § 8541.

[9] The eight exceptions to the grant of immunity are: (1) vehicle liability; (2) the care, custody and control of personal property; (3) the care, custody and control of real property; (4) trees, traffic controls and street lighting; (5) utility service facilities; (6) streets; (7) sidewalks; and (8) the care, custody and control of animals. 42 Pa.C.S.A. § 8542(b).

Supp. 2d at 403; Roberts v. Toal, et al., 1995 WL 51678, *6 (E.D. Pa. Feb. 8, 1995).

Thus, the District Attorney's Office is immune from plaintiff's state law claims under the Tort Claims Act. Accordingly, that part of defendants' Motion to Dismiss that relates to plaintiff's state law claims against the District Attorney's Office is granted.

V. CONCLUSION

For the foregoing reasons, defendants' Motion to Dismiss is granted with respect to plaintiff's § 1983 claim against Smith; denied with respect to plaintiff's § 1983 claim against the District Attorney's Office; and granted with respect to plaintiff's state law claims against Smith and the District Attorney's Office.

An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NICOLE SCHNEYDER	:	
Plaintiff,	:	
	:	
v.	:	**CIVIL ACTION**
	:	**NO. 06-4986**
GINA SMITH; OFFICE OF DISTRICT	:	
ATTORNEY OF PHILADELPHIA	:	
Defendant.	:	
	:	

O R D E R

AND NOW this 9th day of January, 2007, upon consideration of the Motion to Dismiss Plaintiff's Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(6) Filed by Defendants Gina Smith and the Philadelphia District Attorney's Office (Doc. No. 4, filed December 12, 2006); and Plaintiff's Response to Defendants' Motion to Dismiss Plaintiff's Complaint Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure (Doc. No. 6, filed December 21, 2006), for the reasons set forth in the attached Memorandum, **IT IS ORDERED** that the Motion to Dismiss Plaintiff's Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(6) Filed by Defendants Gina Smith and the Philadelphia District Attorney's Office (Doc. No. 4, filed December 12, 2006) is **GRANTED IN PART AND DENIED IN PART**, as follows:

1. Defendant's Motion to Dismiss is**GRANTED** with regard to plaintiff's § 1983 claim against Gina Smith;

2. Defendant's Motion to Dismiss is**DENIED** with regard to plaintiff's § 1983 claim against the Office of District Attorney of Philadelphia;

3. Defendant's Motion to Dismiss is **GRANTED** with regard to plaintiff's state law claims against Gina Smith and the Office of District Attorney of Philadelphia.

BY THE COURT:

/s/ Honorable Jan E. DuBois
JAN E. DUBOIS, J.